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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/649,620

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Phillip F. Acker JR.

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12/05/2005

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EXAMINER

HINZE, LEO T

ART UNIT

PAPER NUMBER

2854

DATE MAILED: 12/05/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/649,620

Applicant(s)

ACKER, PHILLIP F.

Examiner

Leo T. Hinze

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 August 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 15-40 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 15-22, 24-29 and 31-39 is/are rejected.
- 7) ☒ Claim(s) 23, 30 and 40 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 28 August 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>20031114</u> . | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

Claim Objections

1. Claims 32-40 are objected to because of the following informalities: the word “in” in line 3 of claim 32 appears to be extraneous.

Appropriate correction is required.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 15-18, 24, 27, 31, 32, 35 and 36 are rejected under 35 U.S.C. 102(e) as being anticipated by Mollicone et al., US 6,888,779 (Mollicone).

- a. Regarding claim 15, Mollicone teaches an alarm clock comprising: an alarm clock controller (12, Fig. 1) electrically connected to an electrical power source; and at least one electrical connector (“external heat sources... plug directly into the AC power controllers,” col. 7, ll. 61-62) electrically coupled to the alarm clock controller, wherein said alarm clock

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controller includes a circuit operable to switch electricity on and off to the at least one electrical controller (col. 8, ll. 1-5).

b. Regarding claim 16, Mollicone also teaches a heat level controller (15A, Fig. 1) electrically connected to the alarm clock controller and the at least one electrical connector.

c. Regarding claim 17, Mollicone also teaches wherein the heat level controller is adjustable to vary a flow of electricity to the at least one electrical connector when the electricity is switched on to the at least one electrical connector (“regulate the amount of AC power reaching the heat source 19, col. 8, ll. 4-5).

d. Regarding claim 18, Mollicone also teaches at least one heating device (19, Fig. 1) electrically coupled to the at least one electrical connector.

e. Regarding claim 24, Mollicone teaches an alarm clock comprising: an alarm clock controller (12, Fig. 1); a heat level controller in electrical connection with the alarm clock controller (15A, Fig. 1); at least one heating device (19, Fig. 1) electrically connected to the alarm clock controller; and wherein said alarm clock controller activates and deactivates said at least one heating device by switching electricity on and off to said at least one heating device (col. 8, ll. 1-5).

f. Regarding claim 27, Mollicone also teaches wherein the heat level controller includes a circuit operable to variably adjust a flow of electrical power to the at least one heating device when the alarm clock controller activates the at least one heating device (“regulate the amount of AC power reaching the heat source 19, col. 8, ll. 4-5).

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- g. Regarding claim 31, Mollicone also teaches wherein the alarm clock controller includes at least one electrical connector and the at least one heating device is electrically connected to the alarm clock controller through the at least one electrical connector (“external heat sources... plug directly into the AC power controllers,” col. 7, ll. 61-62).
- h. Regarding claim 32, Mollicone teaches a method for waking a user comprising: selecting an initial activation time in an alarm clock controller (“user sets the time and date,” col. 5, ll. 39-40); and activating at least one heating device at the in initial activation time (col. 9, ll. 37-40), the at least one heating device being electrically coupled to the alarm clock controller (“external heat sources... plug directly into the AC power controllers,” col. 7, ll. 61-62).
- i. Regarding claim 35, Mollicone also teaches varying a flow of electricity to the at least one heating device when the alarm clock controller activates the at least one heating device (“regulate the amount of AC power reaching the heat source 19, col. 8, ll. 4-5).
- j. Regarding claim 36, Mollicone also teaches wherein the at least one heating device is activated for a preselected period of time at the initial activation time (col. 9, ll. 50-56).

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

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5. Claims 19, 20, 22, 25, 26, 29, 33, 34, 38 and 39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mollicone in view of Larson, US 5,948,303 (Larson).

a. Regarding claims 19, 25 and 33:

Mollicone teaches all that is claimed as discussed in the rejection of claims 18, 24 and 32 above. Mollicone teaches that the heating device 19 can be “virtually any commercially available AC electrical heat source” (col. 7, ll. 58-59).

Mollicone does not teach wherein the at least one heating device includes at least one of a heating pad or an electrically heated blanket.

Larson teaches a temperature control for a bed, including at least one heating pad element mounted on a resting surface on a mattress of a bed for warming the bed (col. 2, ll. 22-23).

It would have been obvious to a person having ordinary skill in the art at the time the invention was made to use the temperature control of Larson in the invention of Mollicone, because Larson teaches a commercially available AC electrical heat source which is particularly suited to the method of Mollicone.

b. Regarding claims 20, 26 and 34:

Mollicone teaches all that is claimed as discussed in the rejection of claims 18, 24 and 32 above. Mollicone teaches that the heating device 19 can be “virtually any commercially available AC electrical heat source” (col. 7, ll. 58-59).

Mollicone does not teach wherein the heating device further includes one or more electrical switches operable to connect electricity to corresponding one or more zones of the heating device.

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Larson teaches a temperature control for a bed, including at least one heating pad element mounted on a resting surface on a mattress of a bed for warming the bed (col. 2, ll. 22-23). The heating element has zones (34, 36, 38 and 40, Fig. 1) selectively controlled by a controller (12, Fig. 1).

It would have been obvious to a person having ordinary skill in the art at the time the invention was made to use the temperature control of Larson in the invention of Mollicone, because Larson teaches a commercially available AC electrical heat source which is particularly suited to the method of Mollicone.

c. Regarding claims 22, 29, 38 and 39:

Mollicone teaches all that is claimed as discussed in the rejection of claims 18, 24 and 32 above. Mollicone teaches that the heating device 19 can be “virtually any commercially available AC electrical heat source” (col. 7, ll. 58-59).

Mollicone does not teach sensors operable to detect the presence of a user, and wherein the at least one electrical connector is deactivated when the user is present.

Larson teaches a temperature control for a bed, including at least one heating pad element mounted on a resting surface on a mattress of a bed for warming the bed (col. 2, ll. 22-23), and sensors (60, 62, Fig. 1) that sense the presence of an occupant (col. 3, ll. 34-35) and cause the heating elements to be deactivated when no user is present (col. 3, ll. 53-54).

It would have been obvious to a person having ordinary skill in the art at the time the invention was made to use the temperature control of Larson in the invention of Mollicone,

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because Larson teaches a commercially available AC electrical heat source which is particularly suited to the method of Mollicone.

6. Claims 21, 28 and 37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mollicone in view of Wibell, US 4,132,262 (Wibell).

Regarding claims 21, 28 and 37, Mollicone teaches all that is claimed as discussed in the rejection of claims 18, 24 and 32 above. Mollicone teaches that the heating device 19 can be “virtually any commercially available AC electrical heat source” (col. 7, ll. 58-59).

Mollicone does not teach wherein the alarm clock controller includes a circuit to manually switch the at least one electrical connector for a period of time.

Wibell teaches a temperature control for a bed, including a circuit to manually switch the at least one electrical connector for a period of time (68, Fig. 1).

It has been held that merely automating a manual function is not sufficient to patentably distinguish an invention over the prior art. See MPEP § 2144.04 (III).

It would have been obvious to a person having ordinary skill in the art at the time the invention was made to use the temperature control of Wibell in the invention of Mollicone, because Wibell teaches a commercially available AC electrical heat source which is particularly suited to the method of Mollicone. A person having ordinary skill in the art would have combined the two inventions in such a way to maintain manual control over the heating, because a person having ordinary skill in the art would recognize that both manual and automatic functions would increase the functionality of the device, thereby making it more commercially

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successful by making it more desirable to consumers who desire greater features and functionality.

Allowable Subject Matter

7. Claims 23, 30 and 40 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

8. The following is a statement of reasons for the indication of allowable subject matter:

a. Regarding claims 23 and 30, the prior art of record does not teach or render obvious an alarm clock having all of the structure and functionality as claimed, including logic for adjusting an activation time of the at least one electrical connector based on an average time a user wakes after the activation of the at least one electrical connector.

b. Regarding claim 40, the prior art of record does not teach or render obvious a method for waking a user having all of the steps and structure as claimed, including determining an average time between the initial activation time and a detected absence of the user and automatically selecting a subsequent activation time of the at least one heating device based on the average time between the activation time and the detected absence of the user.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

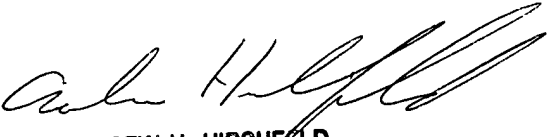
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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Leo T. Hinze whose telephone number is (571) 272-2167. The examiner can normally be reached on M-F 8:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Andrew Hirshfeld can be reached on (571) 272-2168. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Leo T. Hinze
Patent Examiner
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1 December 2005



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